

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

Patricia Rogers	)	
	)	CIVIL ACTION NUMBER
Appellant	)	
	)	08A-11-006-JOH
v.	)	
	)	
Kelly Education SE and Unemployment	)	
Insurance Appeal Board	)	
	)	
Appellee	)	

**ORDER**

And now this 30th day of March, 2010, upon consideration of an appeal filed by Patricia Rogers *pro se* in this case, it appears to the Court that:

(1) Rogers has appealed a decision of the Unemployment Insurance Appeal Board which dismissed her appeal before it for failure to appear. She had appealed a decision of an Appeals Referee who had found her ineligible for benefits. Rogers argues to this Court that she went to the wrong location for the Board hearing. And she renews her arguments about why she is eligible for benefits.

(2) A claims deputy had denied Rogers' application for benefits. She appealed that decision to an Appeals Referee.

(3) The referee conducted a hearing on August 22, 2008. Rogers was a substitute teacher working through Kelly Education SE. Near the end of the school year, Kelly sends

cards to persons like Rogers wanting to know if they are available for summer work. At the hearing Rogers and a representative of Kelly, Erica Ragolia, testified. Rogers testified that she received the card from Kelly asking her to detail her summer availability to substitute teach. Rogers responded to the card by indicating that she was not available because she was taking a position with a different school district and resting her vocal chords.<sup>1</sup> The job with the other district fell through and Rogers could have been available for work; however, she did not notify Kelly. Kelly placed multiple calls to Rogers but received no response. The referee found that as a temporary employee, Rogers had failed to establish her availability at the end of temporary employment. Under these circumstances, 10 *Del. C.* § 3314(1) her decision constituted a “voluntary quit.” As such she was disqualified from benefits.<sup>2</sup>

(4) Rogers timely filed an appeal from the referee’s decision. She was sent notice of a November 5, 2008, hearing to be held at 4425 N. Market Street. The notice was sent to the address Rogers lists on the current case before the Court on October 20, 2008.<sup>3</sup> On November 5th the hearing went forward as scheduled but Rogers did not attend. After waiting for 10 minutes after the start of the hearing, the Board dismissed her appeal. She did not ask the Board for a re-hearing. She timely noticed an appeal to this Court.

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<sup>1</sup> Rogers is a opera singer and needed to rehabilitate her vocal chords after an injury.

<sup>2</sup> *Id.* at 8.

<sup>3</sup> *Id.* at 30.

(5) The Court will not consider Rogers's claim of error on any of the substantive issues the referee decided. 19 *Del. C.* § 3322(a) only permits judicial review of a Board decision after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by Chapter 33. This Court held in *Strazzella v. Joe Tejas, Inc.*, that a claimant's failure to attend the Board appeal hearing precludes this Court's ability to consider the substantive issues on appeal.<sup>4</sup> Therefore, the Court will not consider any arguments raised before the referee and will only consider the Board's dismissal.

(6) Rogers does not present any legal issue on appeal, only a restatement of her reasons for benefits eligibility so the Court will consider the only possible claim, that the Board abused its discretion in dismissing the appeal. Rogers presents no excuse for why she did not attend the appeal other than she "Went to wrong address site for appeal."<sup>5</sup>

(7) The Board's decision to dismiss Rogers's appeal was discretionary. As such, this Court's appellate review is limited to determining whether the Board abused its discretion. Absent an abuse of discretion, the Court must uphold the Board's ruling unless it is unreasonable or capricious.<sup>6</sup>

(8) This Court in *Archambault v. McDonald's Restaurant* held that the Board was

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<sup>4</sup> 2008 WL 376354, at \*2 (Del. Super.)

<sup>5</sup> Record at 37.

<sup>6</sup> *Archambault v. McDonald's Rest.*, 1999 WL 1611337, at \*2 (citing *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. Super. 1991)).

permitted to dismiss an appeal after the claimant failed to attend his hearing.<sup>7</sup> The Court recognized the Board’s “statutory authority to promulgate regulations designed to ensure the prompt and orderly determination of the parties’ rights.”<sup>8</sup> It upheld the Board’s decision to dismiss an appeal after the claimant did not show up for more than 10 minutes after his scheduled hearing. The Court is not inclined to deviate from its earlier ruling in *Archambault*. The Board did not abuse its discretion in dismissing the appeal for Rogers’ failure to attend the hearing. The Board’s decision is **AFFIRMED**.

**IT IS SO ORDERED.**

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J.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*